

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

BRIAN EDMUND STACK,

Plaintiff,

v.

KAISER FOUNDATION HEALTH  
PLAN, INC., DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
DEPARTMENT OF APPEALS BOARD,  
MEDICARE APPEALS COUNCIL,

Defendants.

Case No. 21-00430-DKW-RT

**ORDER GRANTING  
DEFENDANTS' JOINT  
MOTION TO DISMISS**

On November 1, 2021, Plaintiff Brian Edmund Stack initiated this action by suing Defendants—Kaiser Foundation Health Plan, Inc. (Kaiser) and the Department of Health and Human Services, Department of Appeals Board, Medicare Appeals Council (collectively, Defendants)—over a Medicare benefit dispute. On April 26, 2022, however, a Suggestion of Death with respect to Mr. Stack was filed. Dkt. No. 41. Subsequently, after Mr. Stack's passing was confirmed by the representative of his estate, and the representative was given an opportunity to substitute as plaintiff in place of Mr. Stack and did not do so, Dkt. Nos. 45-47, Defendants filed the instant joint motion, seeking dismissal of all claims, pursuant to Federal Rule of Civil Procedure 25(a) (Rule 25(a)).

Defendants argue that, because Plaintiff's representative has failed to file a motion for substitution within the time permitted by Rule, dismissal is required. Having reviewed the unopposed joint motion and the record, the Court agrees with Defendants that, pursuant to Rule 25(a), this action must be dismissed. As a result, for the reasons set forth below, the joint motion to dismiss, Dkt. No. 48, is GRANTED.

### **PROCEDURAL BACKGROUND**

Plaintiff filed a Complaint against Defendants on November 1, 2021. Dkt. No. 1. Defendants filed respective motions to dismiss the Complaint on January 18, 2022 and January 19, 2022. Dkt. No. 30; Dkt. No. 33. Plaintiff failed to oppose those motions, and both were granted with partial leave to amend on March 21, 2022. Dkt 40. No amended complaint, however, was filed. Instead, on April 26, 2022, Kaiser filed a Statement of Notice of Death of Plaintiff. Dkt. No. 41. After serving this Statement on the attorney serving as the personal representative of Plaintiff's Estate, Kaiser filed an Acknowledgment and Acceptance of Service by the personal representative on August 2, 2022. Dkt. No. 46. On November 30, 2022, the assigned U.S. Magistrate Judge confirmed that Kaiser's Statement was served on the personal representative of Plaintiff's Estate on August 2, 2022, and that a motion for substitution had not been filed by the

deadline of November 1, 2022. Dkt. No. 47. Defendants then filed the instant joint motion to dismiss, Dkt. No. 48, and, although a briefing schedule on the same was set, Dkt. No. 49, no further briefing has been submitted, including no opposition or other form of response.

### **STANDARD OF REVIEW**

Rule 25(a)(1) of the Federal Rules of Civil Procedure provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed.R.Civ.P. 25(a)(1).

### **DISCUSSION**

In light of the procedural background of this case, resolution of the joint motion to dismiss is straightforward. Defendants seek dismissal of all claims pursuant to Rule 25(a)(1) because, after Plaintiff's death and service of notice of the same on Plaintiff's personal representative, a motion to substitute has not been filed. As set forth above, the record supports as much. Specifically, Plaintiff's personal representative acknowledged service on August 2, 2022, Dkt. No. 46, and no motion to substitute has been filed in this case, even though the 90-day deadline

has now long passed. As a result, pursuant to Rule 25(a)(1), this case must be dismissed and, thus, the motion to dismiss is GRANTED.


### **CONCLUSION**

For the reasons stated herein, the motion to dismiss, Dkt. No. 48, is GRANTED. The Clerk is instructed to enter Judgment in favor of Defendants and then CLOSE this case.

IT IS SO ORDERED.

Dated: January 13, 2023 at Honolulu, Hawai‘i.



  
Derrick K. Watson  
Chief United States District Judge

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*Brian Edmund Stack v. Kaiser Foundation Health Plan, Inc., et al*; Civil No. 21-00430 DKW-RT; **ORDER GRANTING DEFENDANTS' JOINT MOTION TO DISMISS**